SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 1078

ILLINOIS NATURAL GAS COMPANY,
Appellant,

vs.

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY AND ILLINOIS COMMERCE COMMISSION.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

STATEMENT AS TO JURISDICTION.

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Counsel for Appellant.

BROWN, HAY & STEPHENS,
Of Counsel.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 1078

No. 25,992 in the Supreme Court of the State of Illinois.

ILLINOIS NATURAL GAS COMPANY,

Appellant,

vs.

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY, ET AL.,

Appellees.

JURISDICTIONAL STATEMENT.

Statutory Provisions Sustaining Jurisdiction.

The statute believed to sustain appellate jurisdiction is Section 237, as amended, of the Judicial Code, U. S. C. A., Title 28, Section 344 (a), which provides that:

> "A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question the validity of .. treaty or statute of the United States, and the decision is against its validty; or where is drawn in question the

validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon appeal. The appeal shall have the same effect as if the judgment or decree had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of such State court, and may, in its discretion, award execution or remand the cause to the court from which it was removed by the appeal."

Statute of the State of Illinois, the Validity of Which is Involved.

The Order of the Illinois Commerce Commission, which is appended hereto, the validity of which is involved, was made on the 30th day of November, 1939. The statute under the purported authority of which said Order was made and the validity of which, as applied in this case, is involved, is the Illinois Commerce Commission Act of June 29, 1921 (Chap. 111-2/3, Illinois Revised Statutes, 1939) and particularly Section 50 thereof, which reads as follows:

"ADDITIONS, IMPROVEMENTS AND NEW STRUCTURES—JOINT CONSTRUCTION. § 50. Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall find that additions, extensions, repairs or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility or of any two or more public utilities ought reasonably to be made or that a new structure or structures should be erected, to promote the security or convenience of its employees or the public, or in any other way to secure adequate service or facilities, the Commission shall make and serve an order directing that such additions, extensions, repairs, improvements or changes be made, or such structure or structures be erected in the manner and within the time specified in said order. If any additions, exten-

sions, repairs, improvements or changes, or any new structure or structures which the Commission has ordered to be erected, require joint action by two or more public utilities, the Commission shall notify the said public utilities that such additions, extensions, repairs, improvements or changes or new structure or structures have been ordered and that the same shall be made at the joint cost whereupon the said public utilities shall have such reasonable time as the Commission may grant within which to agree upon the apportionment or division of cost of such additions, extensions, repairs, improvements or changes or new structure or structures, which each shall bear. If at the expiration of such time such public utilities shall fail to file with the Commission a statement that an agreement has been made for a division or apportionment of the cost or expense of such additions, extensions, repairs, improvements or changes, or new structure or structures, the Commission shall have authority, after further hearing, to make an order fixing the proportion of such cost or expense to be borne by each public utility and the manner in which the same shall be paid or secured."

Date of the Judgment Sought to be Reviewed and of the Application for Appeal.

The date of the judgment of the Supreme Court of the State of Illinois appealed from is February 18, 1941.

Application for appeal was presented on the 21st day of April, 1941.

Nature of the Case, Rulings of the Court, the Manner and Method of Raising the Federal Questions Sought to Be Reviewed, and the Way in Which They Were Passed Upon in the Court Below.

Appellant, an Illinois corporation, is a natural gas transmission pipe line company transporting and selling natural gas at wholesale to various gas distributing utilities and to

four or five large industrial customers, all in the State
Illinois. Appellant's transmission lines connect with t
main gas transmission line of its parent company, Pa
handle Eastern Pipe Line Company, at various points in t
State of Illinois, and at the point of connection between t
facilities of said companies, appellant purchases from Pa
handle Eastern Pipe Line Company all of its natural ga
requirements.

Prior to the enactment of the Natural Gas Act, U. S. C. A
Title 15, Sec. 717-717W, appellant had filed with appelle
Illinois Commerce Commission, its rates, rules and regula
tions for natural gas service governing its wholesale sale
of natural gas, and, subsequent to the enactment of sai
Act, appellant made a similar filing with Federal Powe
Commission.

Panhandle Eastern Pipe Line Company, a Delaware co
poration, owns a natural gas transmission line which ex
tends from its production areas in Texas, Oklahoma an
Kansas, through the States of Oklahoma, Kansas, Missou
and Illinois to Dana, Indiana, where it connects with a
other gas transmission line. Panhandle Eastern Pipe Lin
Company sells natural gas at wholesale to gas distributin
utilities and industries along the route of its pipe line an
to appellant, its subsidiary, in Illinois.

The record shows that Panhandle Eastern Pipe Lin
Company, in packing its transmission line from day to da
with natural gas from its sources of supply, estimates th
quantities of natural gas which will be required by all of it
customers including appellant in the various States in whic
it sells natural gas and thus continuously transports suff
cient gas to satisfy the requirements of all of its customers
that the quantities of natural gas necessary to satisfy ap
pellant's requirements are transported continuously b
Panhandle Eastern Pipe Line Company from its sai
sources of supply to the various points of delivery whe

it is delivered to appellant without any reduction in pressure and appellant, without breaking the continuity of such transportation, carries said gas continuously through its gas transmission pipe line system with only such reduction in pressures as is calculated to effectuate the most economical transportation and delivery to its customers; that from day to day the requirements of all of appellant's customers are estimated in advance to enable Panhandle Eastern Pipe Line Company to deliver to appellant the necessary quantities of natural gas from day to day to fulfill the requirements of said customers of appellant; that in this manner natural gas which is contracted for by the appellant before the gas leaves the ground at the sources of supply of Panhandle Eastern Pipe Line Company is appropriated in a practical sense to appellant's various customers and is carried continuously and at high pressures through the facilities of Panhandle Eastern Pipe Line Company and appellant to appellant's various wholesale customers without unnecessary treatment, without break in transportation, and without storage, intermediate or otherwise.

Appellee, Central Illinois Public Service Company, an Illinois gas distributing utility under the jurisdiction of the Illinois Commerce Commission, sells natural gas at retail in various cities and communities in said State, among which are Paris, Charleston, Mattoon and Effingham, which towns are served by its interconnected distribution system.

It purchases natural gas for resale in said towns at the Illinois-Indiana State line from Universal Gas Company, which is engaged in the sale and transportation of natural gas within the State of Indiana, receiving its natural gas supply from the interstate pipe line of the Kentucky Natural Gas Company. The line of Kentucky Natural Gas Company, which is intersected by that of Universal Gas Company, is supplied with natural gas from both the line of Panhandle Eastern Pipe Line Company in Indiana and

gas wells in the State of Kentucky and this gas after being delivered into the intersecting line of Universal Gas Company and resold by Universal Gas Company to appellee, Central Illinois Public Service Company, is ultimately sold at retail by the said appellee in the aforesaid communities in Illinois.

On May 22, 1939 appellee, Central Illinois Public Service Company, filed its application (in the nature of a complaint) with appellee, Illinois Commerce Commission, alleging that its pipe line from the Illinois-Indiana State line near Paris, Illinois to and serving Paris, Mattoon, Charleston and Effingham, Illinois was inadequate to assure dependable service to all of said towns and petitioning Illinois Commerce Commission to require appellant to furnish natural gas to it at or near Mattoon, Illinois, which town is located at the approximate center of its aforesaid interconnected distribution system, a distance of about twenty miles from appellant's source of supply (the interstate pipe line system of Panhandle Eastern Pipe Line Company) for all of said appellee's requirements in said group of towns.

In its answer (response) to said application, appellant alleged its business to be interstate commerce, recited the enactment of the Natural Gas Act effective June 21, 1938, challenged the jurisdiction of the Illinois Commerce Commission on the ground that appellant's business and operations constituted interstate commerce and that the Federal Power Commission had exclusive jurisdiction over appellant and the subject matter of the proceeding and prayed dismissal of the application of Central Illinois Public Service Company for lack of such jurisdiction.

The Illinois Commerce Commission heard the case and entered its order refusing to divest itself of jurisdiction in the premises, granting the application of appellee, Central Illinois Public Service Company, and directing appellant to make the necessary installations to connect with the dis-

tribution system of Central Illinois Public Service Company at or near Mattoon, Illinois. Pertinent excerpts from said Order are as follows:

> "Although there was no substantial disagreement between the parties as to the material facts established by the evidence, the Respondent does challenge the Complainant's right to demand the service and the right of the Commission to compel its rendition on the sole ground that Respondent's operations from the time it receives the gas from Panhandle Eastern are a part of and constitute interstate commerce and for that reason are under the jurisdiction and control of Federal Power Commission and are therefore matters over which this Commission has no authority."
>
> "The Commission having considered the evidence • • • is of the opinion and finds:
>
> "(1) That it has jurisdiction of the subject matter of this proceeding and the parties herein.
>
> • • • • • • •
>
> "(10) That each and every of Illinois Natural Gas Company's handling, dealings, operations and transactions with respect to such natural gas subsequent to its purchase and receipt by said last named company from Panhandle Eastern Pipe Line Company take place within and are of paramount interest to the State of Illinois, and are intrastate, and in no sense interstate, in character."

Thereafter, and in due time, appellant filed with Illinois Commerce Commission its Motion for Rehearing in which it again challenged the jurisdiction of said Commission on the ground that appellant's business was interstate in character and therefore subject to the exclusive jurisdiction of Federal Power Commission under the Natural Gas Act, assailed the Order of Illinois Commerce Commission and the statute under which it was made as invalid as applied to appellant on the ground that it interfered with and

placed a burden upon interstate commerce, in contravention of Article I, Section 8, Clause 3, of the Constitution of the United States, and challenged the conclusions of law of the Illinois Commerce Commission to the effect that appellant's business constituted intrastate commerce on the ground that such conclusions were opposed to the undisputed evidence. Said petition for rehearing was denied without a written opinion.

Appeal was duly perfected by appellant to the Circuit Court of Coles County, Illinois, where review was had on the record made in the proceedings before the Illinois Commerce Commission. By brief (the briefs before the Commission were submitted) appellant urged the same questions as were raised in the original proceedings before said Commission. The judgment of the Circuit Court of Coles County was as follows:

> "The Court after due deliberation approves the Order of the Illinois Commerce Commission entered November 30, 1939."

Thereafter appellant duly perfected its appeal to the Supreme Court of Illinois from the judgment of the Circuit Court of Coles County, Illinois. In the "Statement of Errors Relied upon for Reversal" contained in its Statement, Brief and Argument filed in said State Supreme Court, appellant included, among other alleged errors, the following:

> "1. The Illinois Commerce Commission was without jurisdiction to hear and determine the matter in controversy or to enter its order dated November 30, 1939 in the proceeding before it, because Appellant's operations and business are wholly interstate in character and as to matters in controversy in the proceeding before the Illinois Commerce Commission, the Appellant and the subject matter are under the exclusive jurisdiction of the Federal Power Commission under the

Natural Gas Act, 52 Stat. 821-33 (15 U. S. C. A. 717-717W).

"2. The Illinois Commerce Commission Act of June 29, 1921 is invalid insofar as it may authorize the order of November 30, 1939, entered by the Illinois Commerce Commission, in that the order would interfere with and place a burden upon interstate commerce in contravention of Article I, Section 8, Clause 3, of the Constitution of the United States of America.

* * * * * * *

"4. The conclusions of law of the Illinois Commerce Commission to the effect that Appellant's business and operations constitute intrastate commerce are not supported by and are contrary to the evidence."

Appellant's arguments in said Statement, Brief and Argument were directed at said errors.

The judgment of the Supreme Court of Illinois affirmed the judgment of the Circuit Court of Coles County, Illinois. A copy of the opinion of the Illinois Supreme Court is appended hereto.

The Following Cases Are Believed to Sustain the Jurisdiction of the United States Supreme Court.

Texas & N. O. R. Co. v. *Sabine Tram.*, 227 U. S. 111, 57 L. ed. 442;

R. R. Comm. v. *Texas & P. R. Co.*, 229 U. S. 336, 57 L. ed. 1215;

Western Oil Refining Co. v. *Lipscomb*, 244 U. S. 346, 61 L. ed. 1181;

Western Union Tel. Co. v. *Foster*, 247 U. S. 105, 62 L. ed. 1006;

Pennsylvania v. *West Virginia*, 262 U. S. 553, 67 L. ed. 1117;

Missouri ex rel. Barrett v. *Kansas Natural Gas Co.*, 265 U. S. 298, 68 L. ed. 1027;

Alabama & Vicksburg Ry. Co. v. *Jackson & Eastern Ry. Co.*, 271 U. S. 244, 70 L. ed. 928;

Public Utilities Comm. of Rhode Island v. *Attleboro Steam & Elec. Co.*, 273 U. S. 83, 71 L. ed. 549;

Harold B. Fiske v. *State of Kansas*, 274 U. S. 380, 71 L. ed. 1108;

People of the State of N. Y. ex rel. George W. Bryant v. *Charles F. Zimmerman, et al.*, 278 U. S. 63, 73 L. ed. 184;

Currin v. *Wallace*, 306 U. S. 1, 83 L. ed. 441.

Statement of the Grounds Upon Which it is Contended the Questions Involved Are Substantial.

The continuous and uninterrupted transportation of natural gas from the source of supply in one state to the place of intended destination in another state, regardless of the passing of title and custody thereof en route, as typified by the facts in the present case, uniformly has been held by the Supreme Court of the United States to constitute interstate commerce. *Peoples Natural Gas Co.* v. *Public Service Commission of Pennsylvania*, 270 U. S. 550, 70 L. ed. 726, and cases therein cited.

A State law which by its necessary operation or incidence prevents, obstructs or burdens such transmission is a regulation of and prohibited interference with interstate commerce. *Pennsylvania* v. *West Virginia*, 262 U. S. 553, 67 L. ed. 1117, and cases therein cited.

Moreover, by the enactment of the Natural Gas Act, Congress has committed to the charge of the Federal Power Commission jurisdiction over and control of virtually every important phase of the activities of natural gas companies engaged in the interstate transportation and sale of natural gas. As a part of the comprehensive control over interstate natural gas companies possessed by the Federal Power Commission, are the power to determine the neces-

sity and occasion for the construction and extension of facilities or service by a natural gas company and the power to compel the extension of such facilities and service if such be necessary or desirable in the public interest (U. S. C. A., Title 15, Sec. 717f (a)), together with the power to prohibit one natural gas company (Appellant) from encroaching upon a market in which natural gas is already being served by another natural gas company (Universal Gas Company) except upon the condition that the Federal Power Commission shall first find and determine for itself that the present or future public convenience and necessity require or will require such facilities and extensions thereof (U. S. C. A., Title 15, Sec. 717f (c)). The Illinois Commerce Commission has, therefore, to the extent that its Order compels appellant to deviate from the applicable provisions of the Natural Gas Act, usurped the functions of the Federal Power Commission and intruded into a field of regulation reserved exclusively by the supreme law of the land to the Federal Power Commission.

Acts of Congress in relation to interstate commerce are supreme and there can be no divided authority over such commerce. *Missouri Pac. Ry. Co.* v. *Stroud*, 267 U. S. 404, 69 L. Ed. 683; *Alabama & Vicksburg Ry. Co.* v. *Jackson and Eastern Ry. Co.*, 271 U. S. 244, 70 L. Ed. 928.

Respectfully submitted,

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EXHIBIT "A".

STATE OF ILLINOIS.

ILLINOIS COMMERCE COMMISSION.

27906.

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY

vs.

ILLINOIS NATURAL GAS COMPANY.

In the Matter of the Application for an Order by Commission Directing Respondent to Furnish Wholesale Natural Gas Service to Petitioner at or Near Mattoon, Illinois.

Order.

BY THE COMMISSION:

On May 22, 1939, the Central Illinois Public Service Company, an Illinois corporation, filed with the Commission a petition (in the nature of a complaint) against the Illinois Natural Gas Company, also an Illinois corporation, seeking an order from the Commission requiring the respondent to furnish complainant with wholesale natural gas service at or near the City of Mattoon, Coles County, Illinois.

Pursuant to due notice as required by law and the rules and regulations of the Commission, hearings were held in the cause on June 6th and June 21st, 1939 at the Springfield, Illinois, offices of the Commission.

It appears from the record that the complainant has for some years past been engaged in the business of supplying and distributing natural gas to the public at retail in the cities of Mattoon, Effingham, Paris and Charleston, and small intermediate communities, all in the State of Illinois; that Charleston with a population of about 8000, and Paris with a population of about 9000, are located respectively twelve and forty miles east of Mattoon which has a population of about 15000; and that Effingham, with a population of about 5000, is located approximately thirty miles southwardly from Mattoon.

It further appears that for many years prior to 1932, when complainant began serving said cities with natural gas, it served them with artificial gas from local plants, but in 1927, in order to obtain the economies of quantity manufacture in a centralized plant, it installed a four-inch transmission main from its Mattoon plant to Charleston, and the next year extended said main to Paris, and that two years later complainant installed a like four-inch main from its Mattoon plant to Effingham.

It further appears that since the substitution of natural for artificial gas service by the complainant, it has been receiving natural gas at a point near the City of Paris which it transmits through its four-inch main to Charleston, thence to Mattoon and thence to Effingham; that the complainant received its supply of gas at Paris from the Indiana Consumers Company, a company over which this Commission has no control, and under such circumstances as to leave it dependent upon delivery only from hour to hour.

It further appears that the complainant's main from Mattoon through Charleston to Paris was designed for operation at a pressure of only 100 pounds; that said main at such designed pressure lacks physical capacity to transmit natural gas from Paris in quantities required by complainant at Charleston, Mattoon and Effingham; that because the requirements of the last three named cities have outgrown the lines capacity, complainant is confronted with the necessity of either installing an additional main at a cost of approximately a quarter of a million dollars, or of obtaining natural gas at Mattoon from respondent; that procurement of gas from respondent would not only insure continuity of supply, but would avoid the capital and operating expenses incident to the construction of an additional main and enable complainant to serve its customers in all of the aforesaid cities and the communities intermediate thereof with a gas of higher b. t. u. content at lower rates.

It further appears that the respondent, Illinois Natural Gas Company (hereinafter sometimes referred to as "Illinois Natural") is a subsidiary of the Panhandle Eastern Pipe Line Company (hereinafter sometimes referred to as "Panhandle Eastern"), a Delaware corporation; that prior to June 15, 1938, all of the physical property in Illinois

now owned by respondent, and all the physical property now owned by Panhandle Eastern (excepting in both cases minor subsequent additions) was owned and operated by the Panhandle Illinois Pipe Line Company (hereinafter sometimes referred to as "Panhandle Illinois"), also an Illinois corporation and a subsidiary of Panhandle Eastern; that the property of Panhandle Illinois then embraced (1) a large high pressure gas main extending across the State of Illinois from a point on the state line near Pleasant Hill, Pike County, Illinois, to a point near the Indiana-Illinois state line in Edgar County, Illinois, with incidental pressure-boosting equipment, and (2) a number of lateral mains leading from Illinois points on this high pressure main to the distribution systems of utilities operating in various Illinois cities, with the equipment incident to such laterals; that Panhandle Illinois carried on both the transmission of gas through its large high pressure main into and across the State of Illinois, and the transmission of gas through its laterals to local utilities as an Illinois public utility, under certificates of public convenience and necessity and in accordance with rates, rules, regulations and conditions of service, issued and approved by this Commission.

It further appears that in February, 1938, the respondent company, Illinois Natural, and Panhandle Illinois filed with this Commission, as Docket No. 26553, a joint petition wherein they sought an order approving and authorizing the execution and carrying out of a three party contract providing for the transfer by Panhandle Illinois of its large high pressure main extending across the state and its incidental boosting equipment, to Panhandle Eastern; and the transfer, assignment and conveyance to respondent of all Panhandle Illinois' remaining property and assets, including the laterals and their incidental equipment and the business of supplying Illinois utilities; that under the terms of such contract respondent was to take over so much of Panhandle Illinois' operations and business as comprised the rendering of gas service as a public utility within the State of Illinois, and to own and thenceforth operate all the property to be acquired by it, in the carrying on of a general gas public utility business within the State under the

jurisdiction of this Commission in accordance with rates, rules, regulations and conditions of service approved by the Commission.

It further appears that the purpose of the proceeding was represented to the Commission by both respondent and Panhandle Illinois to be "the separation of the property and business of Panhandle Illinois Pipe Line Company to the end that the property and business which is purely intrastate and of a local utility character, will be owned and operated by the Illinois Natural Gas Company, an Illinois corporation, operated as a public utility in this state, and that the main line and compressor stations not used, useful or necessary in the conduct of a public utility business be transferred to the Panhandle Eastern Pipe Line Company, a Delaware corporation."

It further appears that in such proceeding the Commission was also asked to approve a contract between respondent and Panhandle Eastern for the furnishing by Panhandle Eastern to respondent of all gas required by respondent for resale by respondent to the several distributing companies then, or thereafter to be, served by it, delivery of the gas to respondent to be at the respective connections of respondent's laterals with the large high pressure main to be acquired by Panhandle Eastern, up to which points ownership, control and possession of and responsibility for the gas would be in Panhandle Eastern, but at which points ownership and exclusive control, possession and responsibility should pass to respondent.

It further appears that by order entered June 15, 1938, the Commission approved the carrying out of the aforesaid proposals, and issued to respondent the requisite certificates of convenience and necessity, and that thereafter the proposed transactions were consummated and respondent thereupon began, and has since carried on, under rates, rules, regulations and conditions of service approved by this Commission, a public utility business in the furnishing of natural gas in Illinois to Illinois distributing gas public utilities for distribution by them in this State.

It further appears that all gas handled or in any way dealt with by respondent is obtained by it from Panhandle Eastern under the before mentioned contract, and its terms

expressly limit the gas to be delivered by Panhandle Eastern and received by respondent to that required in territory for which respondent has been, or shall be, granted certificates of convenience and necessity by this Commission; that such gas is delivered by Panhandle Eastern and received by respondent at the points of connection between Panhandle Eastern's main and respondent's laterals; that up to these points of delivery ownership, control, possession and responsibility are in Panhandle Eastern; that upon delivery at these points ownership and "exclusive" control, possession and responsibility pass to respondent; that the contract provides in detail for accurate measurement at points of delivery and requires payment by respondent to Panhandle Eastern according to such measurement; that all physical property in any way devoted to the treatment and handling of the gas from the time of its delivery by Panhandle Eastern to respondent until its delivery by respondent to respondent's customers is owned and operated by respondent and located in Illinois; that all physical treatment and handling of the gas from the time of its delivery by respondent to respondent's customers is done by respondent and occurs entirely within the State of Illinois; that no gas received by respondent moves, or is intended to move, outside of the State of Illinois and all is ultimately consumed within this State; that immediately upon its receipt of the gas from Panhandle Eastern, respondent reduces the pressure in each of its laterals to such amount as results in the most economical transportation commensurate with the requirements of its customers; that respondent further reduces the pressure at the termination of its laterals to meet its customer's needs and the gas is all handled by respondent in accordance with rates, rules, regulations and conditions of service on file with and approved by this Commission.

It further appears, and the respondent agrees, that the rendition of the service as requested by complainant would be profitable to respondent, and both in negotiations had with complainant prior to the beginning of this proceeding, and before the Commission during the progress of the hearings, the respondent stated its willingness to render

the service provided it receives the necessary lawful authority to do so.

Although there was no substantial disagreement between the parties as to the material facts established by the evidence, the respondent does challenge the complainant's right to demand the service and the right of the Commission to compel its rendition, on the sole ground that respondent's operations from the time it receives the gas from Panhandle Eastern are a part of and constitute interstate commerce, and for that reason are under the jurisdiction and control of the Federal Power Commission and are therefore matters over which this Commission has no authority.

It must be conceded that the respondent's procurement of the gas at the respective points of delivery are interstate matters, but respondent's position that the interstate character which prevails to those points must be further extended and made to cover its later dealings with the gas subsequent to its receipt, is untenable in the light of the foregoing undisputed facts. It is true that the movement of the gas through respondent's laterals is caused by what remains, after respondent's reductions, of pressure supplied in effecting its prior interstate transmission, but such continuity of movement is, as is universally held by judicial authority, in no sense controlling, and may exist with respect to intrastate commerce as well as interstate, depending upon the particular facts. In this case the same pressure continues to move the gas to the burners of the patrons of respondent's customers, a movement intrastate beyond any doubt.

Putting aside all question as to the extent of authority given the Federal Power Commission by the Natural Gas Act, it would seem that the record in this case so manifestly discloses respondent's operations subsequent to its receipt of the gas to be so completely local to Illinois, and so wholly intrastate in character, as to preclude regulation or control by any Federal agency.

What constitutes interstate commerce is not a matter for determination by legal formula, but is to be determined from the facts individual to each case as it arises. "Interstate commerce is a practical conception and what falls

within it must be determined on consideration of esta lished facts and known commercial methods." The fa that a commodity is brought across state lines of itse raises no controlling implication that subsequent dealin with respect to it remain interstate matters. The highe judicial authorities are unanimous in the holding that t interstate character created by transportation across sta lines may cease upon arrival at destination within a stat and be thereafter succeeded by a character wholly intr state.

The decisive question in this case is whether respondent dealings and transactions with respect to the gas subsequer to its receipt at points of delivery disclose a termination o those dealings and transactions by which the gas is brough into Illinois and delivered to respondent by Panhandle East ern, and the beginning and thenceforth carrying on of othe new and different dealings and transactions with new an different parties which concern matters wholly confined t Illinois in which the interest local to this State is permanent

The evidence clearly indicates that respondent is engage in two characters of business with respect to its gas. On is made up of its dealings and transactions with Panhandl Eastern in obtaining from that company the gas and it transmission to the various points of delivery in Illinois and the other of its dealings and transactions in disposin of the gas to its Illinois customers after having received it No difference is conceivable between respondent's presen handling of the gas and its present dealings and trans actions concerning it subsequent to its receipt, and thos which would prevail were respondent receiving the gas fro its own wells located at the respective points of receip within this State. The purposes and business of respond ent, disclosed by its actions and actual operations as wel as by the avowed purpose and intention formerly declare by it to this Commission, clearly establish the closing of it interstate relations upon its receipt of the gas, and the be ginning at that point of dealings affecting only and relatin solely to Illinois.

The Commission having considered the evidence an briefs of the respective parties, and being fully advised i the premises, is of the opinion and finds:

(1) that it has jurisdiction of the subject matter of this proceeding and the parties herein;

(2) that the Central Illinois Public Service Company, is an Illinois corporation, and is engaged in the business of furnishing natural gas service for public use in the cities of Mattoon, Paris, Charleston and Effingham and small communities intermediate thereof, and in so doing is a public utility within the meaning of Section 10 of "An Act concerning public utilities," in force July 1, 1921;

(3) that the aforesaid Central Illinois Public Service Company now serves the above mentioned cities and intermediate communities with natural gas procured near the City of Paris, Illinois, thence transmits it to the cities of Charleston, Mattoon and Effingham by means of a four-inch transmission main of which the portion between Paris and Mattoon, a distance of approximately forty miles, has an age of eleven or more years; that said main was designed for operation at a pressure of 100 pounds; that said main at such designed pressure lacks physical capacity to transmit natural gas from Paris in quantities required by the Central Illinois Public Service Company at Charleston, Mattoon and Effingham and intermediate communities;

(4) that the natural gas now served by the Central Illinois Public Service Company in the cities of Paris, Charleston, Mattoon and Effingham and intermediate communities is procured near Paris from the Indiana Consumers Company under circumstances leaving the Central Illinois Public Service Company dependent upon delivery from hour to hour and from a company over which this Commission has no jurisdiction or control, and that to continue to supply Charleston, Mattoon and Effingham from such source would require the installation of an additional main from Paris to Mattoon at a cost of approximately a quarter of a million dollars;

(5) that the procurement of natural gas from Illinois Natural Gas Company at Mattoon for the aforesaid cities and intermediate communities would not only make unnecessary the installation of an additional main between Mattoon

and Paris, but would provide Central Illinois Public Service Company with natural gas of a higher b.t.u. than that now received by it and would enable it to serve its customers in said cities and communities with natural gas service at lower rates;

(6) that the natural gas service sought by the Central Illinois Public Service company can be rendered by the Illinois Natural Gas Company with a reasonable profit to the latter company;

(7) that the Illinois Natural Gas Company, is an Illinois corporation, engaged in the business of furnishing natural gas at wholesale to Illinois natural gas distributing companies in the general territory extending across the central portion of this State from the Mississippi River near Pleasant Hill, Pike County, Illinois, to a point on the Indiana-Illinois state line in Edgar County, Illinois, pursuant to certificates of convenience and necessity granted by this Commission and in accordance with rates, rules, regulations and conditions of service filed with and approved by this Commission, and is a public utility within the meaning of Section 10 of "An Act concerning public utilities," in force July 1, 1921;

(8) that the Illinois Natural Gas Company procures the natural gas so dealt with by it from a large gas transmission main owned and operated by the Panhandle Eastern Pipe Line Company, a Delaware corporation, extending across the State of Illinois from a point on the state line near Pleasant Hill, Pike County, Illinois, to a point on the Indiana-Illinois state line in Edgar County, Illinois, through which said last named company transmits natural gas across the Illinois-Missouri state line into the State of Illinois and there delivers it to the Illinois Natural Gas Company at various points of connection between its large transmission line and lateral mains, owned by the Illinois Natural Gas Company, and used by the latter company exclusively in the transportation of such natural gas in Illinois to customers of such latter company, at which aforementioned points of connection ownership and exclusive control, possession and

responsibility vest in the said Illinois Natural Gas Company;

(9) that immediately upon its receipt of natural gas from the Panhandle Eastern Pipe Line Company, the Illinois Natural Gas Company reduces the pressure in each of its laterals to such amount as results in the most economical transportation commensurate with the requirements of its customers, and that respondent further reduces the pressure at the termination of its laterals to meet the requirements of its customers with respect thereto;

(10) that each and every of Illinois Natural Gas Company's handling, dealings, operations and transactions with respect to such natural gas subsequent to its purchase and receipt by said last named company from the Panhandle Eastern Pipe Line Company take place within and are of paramount interest to the State of Illinois, and are intrastate, and in no sense interstate, in character;

(11) that the public convenience and necessity requires that the prayer of the petition of the Central Illinois Public Service Company should be granted and that the Illinois Natural Gas Company should be ordered, directed and authorized to proceed with reasonable dispatch to make such installations and connections with the Central Illinois Public Service Company's natural gas system at or near the City of Mattoon, Illinois, as shall be adequate for the supplying by Illinois Natural Gas Company to the Central Illinois Public Service Company of the latter company's natural gas requirements at the cities of Mattoon, Charleston, Paris and Effingham and the communities intermediate thereof, and that a certificate of public convenience and necessity should be issued to the Illinois Natural Gas Company to make such installations and connections and engage in such wholesale natural gas business, and that beginning with the construction of such installations and connections the said Illinois Natural Gas Company should report, in writing, at thirty day intervals, to the Secretary of this Commission, at Springfield, Illinois, the progress being made with the construction of such installations and connections;

(12) that upon completion of said installations and connections the Illinois Natural Gas Company should begin, and thereafter until further order of this Commission continue, to supply the Central Illinois Public Service Company at said connections with natural gas sufficient in quantities to meet said latter company's needs at the aforesaid cities of Mattoon, Charleston, Paris and Effingham and intermediate communities under the rates, rules, regulations and conditions of service which the said Illinois Natural Gas Company now has, or may hereafter have, on file with and approved by this Commission; and

(13) that the Commission should retain jurisdiction of the subject matter of this proceeding and the parties hereto, for the purpose of entering such order or further orders as the Commission may deem meet.

It Is Therefore Ordered by the Commission that the prayer of the petition of the Central Illinois Public Service Company be, and it is hereby, granted, and that the Illinois Natural Gas Company be, and it is hereby, ordered, directed and authorized to proceed with reasonable dispatch to make such installations and connections with the Central Illinois Public Service Company's natural gas system at or near the City of Mattoon, Illinois, as shall be adequate for the supplying of Illinois Natural Gas Company to the Central Illinois Public Service Company of the latter company's natural gas requirements at the cities of Mattoon, Charleston, Paris and Effingham and the communities intermediate thereof, and that a certificate of public convenience and necessity be, and it is hereby ordered issued to the Illinois Natural Gas Company to make such installations and connections and engage in such wholesale natural gas business, and that beginning with the construction of such installations and connections the said Illinois Natural Gas Company shall report, in writing, at thirty day intervals, to the Secretary of this Commission, at Springfield, Illinois, the progress being made with the construction of such installations and connections.

It Is Further Ordered that upon completion of said installations and connections the Illinois Natural Gas Company shall begin and thereafter until further order of this

Commission continue to supply the Central Illinois Public Service Company at said connections with natural gas sufficient in quantities to meet said latter company's needs at the aforesaid cities of Mattoon, Charleston, Paris and Effingham and intermediate communities under the rates, rules, regulations and conditions of service which the said Illinois Natural Gas Company now has, or may hereafter have, on file with and approved by this Commission.

It Is Further Ordered that the Commission retain jurisdiction of the subject matter of this proceeding and the parties hereto, for the purpose of entering such other or further orders as the Commission may deem meet.

By order of the Commission at Chicago, Illinois, this 30th day of November, A. D. 1939.

(Signed) JOSEPH E. KNIGHT,
[SEAL.] *Secretary.*

EXHIBIT "B".

Docket No. 25992—Agenda 55—December, 1940.

THE CENTRAL ILLINOIS PUBLIC SERVICE COMPANY et al., Appellees,

v.

THE ILLINOIS NATURAL GAS COMPANY, Appellant

Mr. Justice Farthing delivered the opinion of the court:

The Central Illinois Public Service Company filed with the Illinois Commerce Commission a petition for an order requiring the Illinois Natural Gas Company to furnish natural gas to it at wholesale. The gas company's defense was that it was engaged in interstate commerce and was under the exclusive jurisdiction of the Federal Power Commission and, therefore, the Illinois Commerce Commission lacked jurisdiction. The commission held against the gas company and granted the prayer of the petition. On appeal, the circuit court of Coles county affirmed this order and appellant has perfected a further appeal to this court.

The main question is whether the Illinois Natural Gas Company is engaged in interstate or intrastate commerce. The facts are not disputed. The Illinois Natural Gas Company is a wholly-owned subsidiary of the Panhandle Eastern Pipe Line Company, a Delaware corporation, hereafter called the Panhandle company. That company gathers natural gas in Texas and Kansas and transmits it through its high pressure mains through several States, including Illinois. Its main runs in a general east and west direction through Illinois. The Illinois Natural Gas Company, hereafter called the Illinois Natural, owns certain lateral transmission lines and incidental equipment all of which are located in Illinois. Gas is delivered to it at the points where its lateral transmission lines intersect the high pressure main of the Panhandle company. Gas is furnished to the Illinois Natural pursuant to a contract between it and the Panhandle company approved by the Illinois Commerce Commission. When the gas enters the lateral transmission lines of Illinois Natural pressure is reduced for economical transportation and delivery. This company delivers the gas from its lateral lines to local public utility companies, which, in turn, distribute it to the general public. Before delivery to these local utilities the pressure is further reduced.

Appellant argues that although all the property owned by it is located entirely in Illinois and although it sells natural gas only to Illinois utilities, it nevertheless is engaged in interstate commerce and is not subject to the regulations of the Illinois Commerce Commission. In support of this position, it points out that in packing the high pressure transmission line from day to day with natural gas from the sources of supply, Panhandle estimates the quantities of natural gas that will be used by Illinois Natural and other companies purchasing from Panhandle, in Illinois and other States, and each day continuously transports sufficient gas to satisfy the requirements of all of these customers.

Several cases claimed by both sides to be more or less analogous to the one before us have been cited and discussed in the briefs. In East Ohio Gas Co. *v.* Tax Commis-

sion, 283 U. S. 465, 75 L. ed. 117, the East Ohio Gas Company was an Ohio corporation which furnished natural gas to consumers in more than fifty municipalities in that State. It bought part of its gas from outside the State. At the State line the gas went into this company's high pressure transmission lines and these connected with distribution lines where less pressure was maintained. An Ohio statute taxed the gross receipts of corporations engaged in the business of supplying natural gas to consumers within the State. It was held the proceeds from the sale of gas bought outside the State were taxable under the statute and the contention that this was interstate commerce was overruled. The Supreme Court of the United States said: "The transportation of gas from wells outside Ohio by the lines of the producing companies to the State line and thence by means of appellant's high pressure transmission lines to their connection with its local systems is essentially national—not local—in character and is interstate commerce within as well as without that State. The mere fact that the title or the custody of the gas passes while it is en route from State to State is not determinative of the question whether interstate commerce ends." This statement is relied on by appellant. However, the court went on to hold in that case: "But when the gas passes from the distribution lines into the supply mains, it necessarily is relieved of nearly all the pressure put upon it at the stations of the producing companies, its volume thereby is expanded to many times what it was while in the high pressure interstate transmission lines, and it is divided into the many thousand relatively tiny streams that enter the small service lines connecting such mains with the pipes on the consumers' premises. So segregated the gas in such service lines and pipes remains in readiness or moves forward to serve as needed. The treatment and division of the large compressed volume of gas is like the breaking of an original package, after shipment in interstate commerce, in order that its contents may be treated, prepared for sale and sold at retail." It is important to note in considering the instant case that it is not claimed appellant was engaged in intrastate commerce as far as its relations with the Pan-

handle company are concerned. Here, as in the East Ohio Gas Co. case, the claim is made that after the gas is in the lateral lines of Illinois Natural, its pressure reduced and ready for delivery to local utilities, it is no longer in interstate commerce.

In Missouri *v.* Kansas Natural Gas Co. 265 U. S. 298, 68 L. ed. 1027, it was held the transportation of gas through pipe lines from one State to another for sale to distributing companies is interstate commerce. That same proposition is laid down in Public Utilities Com. *v.* Landon, 249 U. S. 236, 63 L. ed. 577. But in that case the court held: "But in no proper sense can it be said under the facts here disclosed, that sale and delivery of gas to their customers at burner tips by the local companies operating under special franchises constituted any part of interstate commerce. The companies received supplies which had moved in such commerce, and then disposed thereof at retail in due course of their own local business." The court also stated that "Interstate commerce is a practical conception and what falls within it must be determined upon consideration of established facts and known commercial methods."

In Public Utilities Com. *v.* Attleboro Steam & Electric Co. 273 U. S. 83, 71 L. ed. 549, a Rhode Island company sold electricity to a Massachusetts firm and made delivery at the State line. It was held this was interstate commerce and the rates could not be regulated by the Rhode Island Public Service Commission. That, clearly, was an attempt to regulate interstate commerce and is not in point here.

In Southern Natural Gas Corp. *v.* Alabama, 301 U. S. 148, 81 L. ed. 970, the question presented was whether the imposition of a franchise tax upon the Southern Natural Gas Corporation was invalid as a direct burden upon interstate commerce. There the Southern company was engaged in the transmission of natural gas from Louisiana and Mississippi to various States. It had contracts for delivery of natural gas to four purchasers in Alabama. Three were intrastate utilities and the fourth a consumer. The gas was delivered in continuous movement from the gas fields without break or interruption to the point of delivery, viz., the meter house at which the gas so sold was measured for the purpose of payment. At this point pressure was re-

duced and the gas measured. The contracts with the utilities contained detailed provisions as to delivery, pressure, measurement, etc. The contract with the Tennessee company (the consumer) also provided the Southern company should maintain service lines to the different plants of the consumer. It was held the sale to this company was intrastate business. The court said there was no essential distinction between the establishment of such a local activity to meet the needs of consumers in industrial plants and the service to consumers in the municipalities which was found in the East Ohio Gas Company case, supra. The court also quoted with approval this language from Missouri *v.* Kansas Natural Gas Co. supra: "The business of supplying, on demand, local consumers is a local business, even though the gas be brought from another State and drawn for distribution directly from interstate mains; and this is so whether the local distribution be made by the transporting company or by independent distributing companies. In such case the local interest is paramount, and the interference with interstate commerce, if any, indirect and of minor importance."

We think clearly the local interest, in the case before us, is paramount and the national interest indirect and of minor importance. No attempt is made to regulate the transmission or delivery while the gas is in the high pressure lines, on its way through the State of Illinois or from a point without to a point within Illinois. No such attempt is made until the gas has left the high pressure lines, its pressure reduced, and delivered to the wholly intrastate lines ready for delivery to local utilities. The question of what local utilities are entitled to be furnished with this gas is primarily one of local concern. Although the quantity of gas to be transmitted from the sources of supply will, of course, depend in part on the amount used in Illinois, that does not render the business of the distributing company in furnishing gas to local companies interstate in character.

In view of our holding that the order of the commission affects only intrastate commerce, the contention that the Natural Gas act (15 U. S. C. A. 717, et seq.) gives the Federal Power Commission exclusive jurisdiction of the

matters involved in this proceeding must be overruled. The provisions of that act plainly show they apply only to interstate commerce, and that the act was not intended to disturb the States in the exercise of their jurisdiction over the sale and distribution of natural gas in intrastate commerce. Thus, section 1 (b) of the act reads, in part: "The provisions of this chapter shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption * * * but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas."

The judgment of the circuit court is affirmed.

Judgment affirmed.

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